

MS PETITION
Docket No.: 0879-0364P
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Hiroyuki KURASE

Application No.: 09/994,747

Confirmation No.: 8657

Filed: November 28, 2001

Art Unit: 2622

For: AUDIO FILE DELETING METHOD,
APPARATUS AND PROGRAM AND
CAMERA WITH AUDIO REPRODUCING
FUNCTION

Examiner: Y. K. Aggarwal

PETITION UNDER 37 C.F.R. § 1.181
TO WITHDRAW THE HOLDING OF ABANDONMENT AND OPTIONAL PETITION
TO REVIVE APPLICATION (UNINTENTIONAL) UNDER 37CFR §1.137(B)

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant has not received an official Notice of Abandonment for the above identified application however, applicant believes the case to be inadvertently abandoned due to lack of response to an Official Action within the six month time period. Should applicant's understanding be incorrect and this case not be abandoned then please disregard this petition and do not charge any fees associated with the petition to the applicant.

In view of the believed abandonment of the application, applicant hereby respectfully petitions under the provisions of 37 C.F.R. § 1.181 and MPEP §

711.03(c) for a decision to withdraw the holding of abandonment due to failure to receive an Office Action.

The Office Action dated August 14, 2007 was never received by the offices of the undersigned, and a search of the file jacket for the present application and the firm docketing records confirms that the Office Action was never received. The offices of the undersigned did not become aware of the Office Action until a review of PAIR alerted applicant to the Office Action.

EVIDENCE

The fact that the Office Action dated August 14, 2007 was never received in the offices of Birch, Stewart, Kolasch & Birch, LLP. It is understood that the USPTO can review these records for verification, and therefore see that the Office Action dated August 14, 2007 was never received by Birch, Stewart, Kolasch & Birch, LLP.

Birch, Stewart, Kolasch & Birch, LLP was part of a pilot program for downloading Office Action via PAIR. During this process the U.S. Patent and Trademark Office electronically notifies our office when an action has been issued. The Office of the undersigned received an e-mail Notification from the U.S. Patent and Trademark Office on August 14, 2007, indicating that new correspondence was available in the U.S. Patent and Trademark Office's Patent Application Information Retrieval (PAIR) system for the above-identified application. However, at the time this Notification was received, the only new item present in PAIR was the Interview Summary dated August 7, 2007. After this document was retrieved from PAIR, the U.S. Patent and Trademark Office subsequently posted on August 15, 2007 the Office Action dated August 14, 2007 without further notification or sending of a courtesy postcard when the office action was not downloaded.

This issue has been made aware to Mr. Tony Uranga who indicated that the U.S. Patent and Trademark Office had problems of this nature during the pilot program period which have addressed since. It was suggested to submit a petition explaining the USPTO error so that the application can be revived. Mr. Uranga's explanation for the U.S.P.T.O. error is attached hereto.

SUMMARY

In view of the above-described facts, it is respectfully submitted that the abandonment of the present application was unavoidable and due solely to problems with the USPTO system for emailing and notifying applicants of new actions. It is noted that the Office Action dated August 14, 2007 was never received in the offices of Birch, Stewart, Kolasch & Birch, LLP. The present Petition is timely filed for this purpose.

Since the above-mentioned Office Action was never received in the offices of the undersigned, it is believed that no petition fee is necessary in connection with this Petition.

OPETIONAL PETITION TO REVIVE (UNINTENTIONAL)

In the event the Office of Petitions finds the above Petition to Withdraw Holding of Abandonment inadequate, it is respectfully requested that this paper be considered an Optional Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b).

The above-identified application became abandoned for failure to file a timely and proper response to the Office Action dated August 14, 2007. The following items required under 37 CFR 1.137(b) are provided:

(1) The petition fee \$1,540.00 required by 37 CFR 1.17(m) is authorized to be charged to Deposit Account No. 02-2448. However, in view of the

foregoing remarks, it is respectfully submitted that this application became abandoned due to an error with the U.S. Patent and Trademark Office's electronic delivery system and, accordingly, no petition fees should be due.


(2) A response to the Office Action dated August 14, 2007, are attached hereto.

(3) The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: October 31, 2008

Respectfully submitted,

By  # 39,491
for D. Richard Anderson
Registration No.: 40,439
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant

Attachments